

### Objections to Staff's Analysis of Compliance (Tech Memo #1) and MOU Issues

No.	Comment	Parties	Page #	Staff Response
14	The Basin Plan amendment seems drastic and premature and is based on Regional Board oversight cases only.	City	101, 2 <sup>nd</sup> paragraph	Beneficial Uses are impaired as demonstrated in Tech Memo #2 (groundwater), #3 (beaches) and #4 (lagoon). The City has had almost 20 years to implement an effective wastewater management strategy. Results of City's 2004 Stone studies are consistent with Staff's conclusion that both commercial and residential discharges have impacted groundwater quality.
15	Objections to prohibition – suggest improvement in permitting, reporting, communications and compliance between all affected parties	City	101, 2 <sup>nd</sup> paragraph	<p>See matrix for “Objections to the Regulatory Process for Adoption of the Prohibition” objections (page 6), Response to Comment #2. Also, the City has not provided satisfactory assurance that systems will be appropriately designed, located, sized, spaced, constructed and maintained. City's oversight efforts have been slow, and ineffective. For example, IWIMS, the City's wastewater management database, is inaccurate and not well populated. The City's Operating Permit Program, initiated in March 10, 2008, will take many years to cover a substantial portion of residents and small commercial dischargers since the City only requires upgrades at point of sale and remodeling.</p> <p>Many WDR dischargers have been repeatedly warned of violations. The Regional Board enforced all permitted facilities as much as possible in view of the limited staff resources. In addition, dischargers are responsible to self-monitor and ensure compliance as required by WDRs.</p> <p>Staff acknowledges the City has implemented many programs to comply with the MOU, and that the City asserts it is able to offer satisfactory assurances.</p>
16	What criteria were used to determine violations? Why are all violations weighted similarly?	City	101, 3 <sup>rd</sup> paragraph	Regarding criteria, staff applied specifications in WDRs for determination of violations. In response to comments, staff revised Tech Memo #1, Table 4 to distinguish discharge violations and non-reported parameters.
17	Notices of Violation (NOVs) contain mistakes: For example: Hughes alleges that an NOV was mistakenly issued for non-submittal and late submittal.	City	102, 1 <sup>st</sup> paragraph	An amended NOV was issued to Hughes. Staff's error resulted from Hughes' incorrectly dated submittals. Further analysis of Hughes' compliance status indicated that Hughes failed to submit records of waste hauling.

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18	Existing [commercial and residential] OWDSs will be replaced with advanced systems, which should eliminate concerns with older systems causing pollution. Prohibition fails to credit City's progress including upgrades and new commercial systems reusing water.	City	102, 2 <sup>nd</sup> paragraph 105, 2 <sup>nd</sup> paragraph	Disagree. The small localized cleanups in the high density discharge area are not effective. It is worse because the high discharge violation rate results in groundwater pollution as evidenced in compliance history and Tech Memo #2. For commercial facilities, 40% (8 out of 20 commercial facilities) have advanced treatment systems. Seven out of these 8 commercial facilities have discharge violations.
	Over time, all of the OWDSs in the City will be upgraded to the advanced systems. The proposed Prohibition freezes the progress.  The new OWDSs will not pollute groundwater. Staff failed to consider that advanced systems would help to improve the current situation even in advance of 2014 prohibition.	Latham and Watkins	442, 1st paragraph  441, 4 <sup>th</sup> and 5 <sup>th</sup> paragraphs	Only about 20% of residential systems have advanced treatment; most are still passive systems that impact water quality. For example, one residence in Serra Retreat has total system failure. An effective and timely solution is not apparent.  Most individual advanced systems for commercial properties do not operate properly to protect water quality, as evidenced by the compliance history. We have similar concerns for residential advanced systems. City's Integrated Wastewater Management Information System (IWIMS) submitted in June 2009 demonstrated that IWIMS is not a tool for tracking compliance. A regional solution is needed to protect water quality in the Malibu Civic Center area.
19	Prohibition is unfair to many dischargers who invested resources upgrading the old septic systems to advanced treatment systems.	WW Advisory Committee	186	Acknowledged. However, staff is concerned that many advanced treatment systems are inadequately designed to handle seasonal or holiday peak flows. Most of the advanced treatment systems have startup problems, such as Malibu Lumber, or maintenance problems, such as the two plants in Winter Canyon. See also response to Comment No. 187.  Tech Memo #1 documented compliance history including facilities with advanced treatment systems. Tech Memo #2 demonstrated wide-spread groundwater pollution from all discharges, including facilities with advanced treatment systems.
20	The Regional Board did not ensure that the septic systems are designed/operated/maintained properly	School District	210, 1 <sup>st</sup> paragraph	Most of these systems were permitted by City or County and are under City or County's oversight.
21	Despite the WDRs issued by the Regional Board to dischargers, the violations of effluent limits and effluent flow continue.	Baykeeper	213, 5 <sup>th</sup> paragraph	Concur. See Tech Memo #1.

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22	Without a prohibition, impairment of beneficial uses and violations of water quality objectives (WQO) will continue. The existing permitted dischargers routinely violate effluent limits for nutrients and pathogens. WDR are insufficient to ensure that WQO will be met. Even the Malibu Lumber Yard "state of the art" system violates its effluent limits and can not ensure that water quality is protected.	Baykeeper	216, 6 <sup>th</sup> paragraph 217, 1 <sup>st</sup> paragraph	Concur. See Tech Memo #2, #3 and #4.
23	Many of Malibu's smaller businesses are simply uninformed about the current requirements for wastewater permitting.	Chamber	230, 3 <sup>rd</sup> paragraph	Many commercial facilities failed to apply for WDRs resulting in the Regional Board issuing California Water Code (CWC) section 13260 directives in April 2009. The directives include detail requirements for permitting. Some facilities failed to respond to CWC section 13260 directives by the due date. Many smaller businesses continue to discharge without a permit despite Regional Board efforts.
24	For the most part these septic systems satisfactorily perform the disposal objective and do provide an effective level of treatment.	Chamber	230, 4 <sup>th</sup> paragraph 231, 1 <sup>st</sup> paragraph	Disagree. All commercial systems failed to comply with the WDRs as evidenced by data used to support the NOV's issued by the Regional Board between April and June 2009. Many systems aren't adequately designed and sited, and cannot handle the flow of wastewater generated by land use activities permitted by the City. (See Tech Memo #5.) See also response to Comment No. 186
25	Tech Memo #1, Table 4 mis-stated violation count of 62 which did not account for TSO extension from 1/30/06 to 8/31/06. An additional 12 violations cited late reporting by a few days.	Colony Plaza	265, 5 <sup>th</sup> paragraph	Acknowledged. Staff revised Tech Memo #1, Table 4 to reflect a TSO extension granted by the Executive Officer in 2006. The correct violation count is 55 (not 62, as stated in the July 31, 2008 draft). Late reporting is a violation.
26	MOU - If the <i>Basin Plan</i> is amended, it is necessary to modify the MOU to carve out the portion of the unincorporated County within Prohibition Area.	County	190	Concur. Staff will initiate a meeting to discuss changes to the MOU if the Basin Plan amendment is adopted by the Regional Board.

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27	MOU - The City of Malibu has failed to develop a truly comprehensive wastewater management plan for the Civic Center Area.	Bay Restoration Commission	195	Concur. See Tech Memo #1. Also see matrix for "Objections to the Regulatory Process for Adoption of the Prohibition" page 6, Responses to Comments #1 and #2.
	City has failed to adequately regulate smaller dischargers under MOU, including the requirement to adopt ordinances requiring: a. upgrades of all OWDS within the six-month time-of-travel zone by 9/16/06 and within the Malibu Lagoon contributory area by 9/17/09, b. de-nitrification standards for residential areas within the contributory area by 9/17/06 and c. registration criteria and programs for OWDS management by 9/17/08.	BayKeeper	213-214	
28	MOU - The Regional Board is not adequately staffed to timely issue zero-discharge permits to residents.	Malibu Knolls POA	476	The Regional Board staff does not intend to issue zero-discharge permits to residents in the Civic Center Area of Malibu. In addition, the City of Malibu currently regulates residential discharges.